IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1076 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE LAND DEVELOPMENTCORPORATION LTD - Petitioner(s)
Versus
AHMEDABAD ELECTRICITY CO LTD - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1,
MR KB PUJARA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/12/2006

ORAL JUDGMENT

In this petition, the petitioner Gujarat State Land Development Corporation (hereinafter to be referred to as "the Corporation") has challenged the supplementary bill issued in August 1999 by the

respondent Ahmedabad Electricity Company demanding a sum of Rs.6,73,508/- from the Corporation.

2. Apparently, the said demand was for difference in unpaid electricity dues of the petitioner Corporation to the respondent. The case of the respondent is that for the period between September 1993 and July 1999, due to error on its part, inaccurate multiplying factor was recorded in case of the petitioner Corporation which resulted into erroneous periodical bills being issued. It is, therefore, the case of the respondent Electricity Company that the petitioner short-paid electricity charges for the aforesaid period. Considering these aspects of the matter, supplementary bill came to be issued. Break-up of the bill is produced by the respondent at Annexure R-1 with the affidavit in reply.

3. The petitioner challenges the said demand primarily on two grounds. Firstly, it is contended that the demand is belated. It is contended that admittedly the period of consumption is ranging from September 1993 to July 1999 for which the bill was for the first time issued in the year 1999. It is, therefore, contended that on the ground of delay and laches, the demand cannot be sustained. Second limb of the challenge of the petitioner is that the respondent did not disclose the exact nature of electricity charges allegedly short-charged from the petitioner. It is contended that without any

clarification of the reasons or nature of short-payment, the respondent could not have unilaterally raised demand running into several lacs of rupees from a semi-Government Corporation.

4. On the other hand, the respondent Electricity Company opposed the petition through an affidavit in reply filed on 26th June 2000 and through oral submissions made by learned advocate Shri Pujara for the Electricity Company.

5. At the time of admission of the petition, learned single Judge of this Court had granted interim relief in favour of the petitioner on 7th August 2001 on the condition that the petitioner Corporation deposits with the respondent the amount of difference for the period of three years immediately prior to the date of issuance of the supplementary bill. It is jointly stated that the petitioner Corporation had fulfilled the said condition.

6. With respect to the question of delay in raising the demand, at the outset, it can be seen that a learned single Judge of the Bombay High Court in the case of **U.A.Thadani v. B.E.S.T. Undertaking**, AIR 2000 Bombay 264 came to the conclusion that case of under-billing due to clerical mistake or human error or such like mistake would not be governed by section 26 of the Electricity Act and, therefore, the period of limitation provided thereunder would not

apply. Somewhat similar view was expressed by a Division Bench of the Bombay High Court in **M/s.Bharat B & D Mfg. Co. Ltd. v. Bombay Municipality,** AIR 1978 Bombay 369 also.

7. Learned advocate Shri Pujara further pointed out that in an unreported decision of a Division Bench of this Court dated 1st August 2002 in First Appeal No.74/84, in the case of G.E.B. v. Rajkot Municipal Corporation also it has been held that in case of error or mistake in calculation of electricity charges, limitation provided under section 26 of the Act would not apply. In view of these decisions, contention of the petitioner regarding limitation in enforcing the demand cannot be upheld.

8. With respect to the question of exact nature of error in calculating electricity charges earlier and the calculation of unpaid charges, it can be seen that the respondent Electricity Company has placed on record its calculations and supported the same with the help of an affidavit. Nevertheless, certain issues regarding the exact multiplying factor are not easily available on record. I have, however, no reason to disbelieve the calculations produced on record by the respondent Company. However, since the petitioner is a semi-Government Corporation and since full details of the calculations have neither been produced on record nor supplied to the petitioner so far, ends of justice would be met if suitable

directions in this regard are given.

9. In the result, this petition is disposed of by providing that if a responsible Officer of the petitioner Corporation approaches the respondent Electricity Company, a conversant officer of the respondent Company shall supply full details of the electricity charges short-collected from the petitioner and will also supply necessary calculations in this regard. A responsible officer of the petitioner Corporation shall approach the respondent within a period of four weeks from today. Upon clarification as provided hereinabove, remaining outstanding amounts will be paid over within a period of fours weeks thereafter.

10. With the above directions, the petition is disposed of. Rule is discharged. Interim relief granted earlier is vacated.

(Akil Kureshi, J.)

(vjn)